

**NINTH DAY**  
(Wednesday, July 15, 1987)

The Senate met at 11:00 a.m., pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Anderson, Armbrister, Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Green, Harris, Henderson, Johnson, Jones, Krier, Leedom, McFarland, Montford, Parmer, Sarpalius, Sims, Tejeda, Truan, Whitmire, Zaffirini.

Absent: Santiesteban, Uribe, Washington.

Absent-excused: Lyon, Parker.

A quorum was announced present.

Senate Doorkeeper Jim Morris offered the invocation as follows:

Almighty and merciful Father, this morning we pray that we have brought to this place the very best of us and that we have come eager to work—glad to be alive and grateful that on this day we can contribute to the solution and not the problem. In His name we pray. Amen.

On motion of Senator Brooks and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

**LEAVES OF ABSENCE**

Senator Parker was granted leave of absence for today on account of important business on motion of Senator Brooks.

Senator Lyon was granted leave of absence for today on account of important business on motion of Senator Brooks.

**REPORTS OF STANDING COMMITTEES**

Senator Harris submitted the following report for the Committee on Economic Development:

S.B. 34  
S.B. 45  
H.B. 81 (Amended)  
S.J.R. 7  
C.S.S.B. 59

Senator Parmer submitted the following report for the Committee on Intergovernmental Relations:

H.B. 105  
S.B. 57  
H.B. 54  
S.B. 51  
C.S.S.B. 41  
C.S.S.B. 50  
C.S.S.B. 79

Senator Farabee submitted the following report for the Committee on State Affairs:

S.J.R. 6  
S.B. 52 (Amended)  
C.S.S.B. 68

Senator Blake submitted the following report for the Committee on Administration:

H.B. 44  
H.C.R. 11  
H.C.R. 17  
H.C.R. 19  
C.S.H.C.R. 20  
C.S.H.C.R. 27  
H.C.R. 48  
H.C.R. 49  
H.C.R. 61  
S.C.R. 10  
S.R. 64  
S.R. 70  
S.C.R. 25

Senator Edwards submitted the following report for the Committee on Nominations:

We, your Committee on Nominations, to which were referred the attached appointments, have had same under consideration, and report them back to the Senate for final consideration.

To be a Member of the BOARD OF DIRECTORS, SULPHUR RIVER BASIN AUTHORITY: Jim Garza, Titus County

To be a Member of the BOARD OF DIRECTORS, BRAZOS RIVER AUTHORITY: William D. Fitch, Brazos County.

To be a Member of the BOARD OF DIRECTORS, TEXAS HOUSING AGENCY: George R. Farish, Harris County.

To be Members of the BOARD OF TRUSTEES, TEXAS MUNICIPAL RETIREMENT SYSTEM: Carl L. White, Bexar County; Leland D. Nelson, Dallas County.

To be a Member of the TEXAS BOARD OF PRIVATE INVESTIGATORS AND PRIVATE SECURITY AGENCIES: Joel Kenneth Glenn, Tarrant County.

To be a Member of the TEXAS JUDICIAL COUNCIL: Frank B. Davis, Harris County.

To be a Member of the BOARD OF REGENTS, NORTH TEXAS STATE UNIVERSITY: Mrs. Billie Lucille Parker, Tarrant County.

To be a Member of the BOARD OF REGENTS, TEXAS WOMAN'S UNIVERSITY: Glen E. (Gene) Sparks, Dallas County.

To be a Member of the BOARD OF REGENTS, TEXAS STATE TECHNICAL INSTITUTE: Jere J. Ruff, Gregg County.

To be a Member of the TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS: Mrs. Yvonne Kohutek, Bexar County.

To be a Member of the BOARD OF TRUSTEES, TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM: Mrs. Kathy Hynson, Fort Bend County.

To be a Member of the BOARD OF DIRECTORS, UPPER COLORADO RIVER AUTHORITY: Carl S. Strain, Tom Green County.

To be Members of the BOARD OF DIRECTORS, BANDERA COUNTY RIVER AUTHORITY: Craig A. Tips, Bandera County; Joe K. Leighton, Bandera County; Jose Manuel Cantu, Bandera County; Paul Garrison, Jr., Bandera County.

To be a Member of the COMMISSION ON UNIFORM STATE LAWS: Judge David Peebles, Bexar County.

To be BRANCH PILOTS FOR THE BRAZOS RIVER HARBOR NAVIGATION DISTRICT OF BRAZORIA COUNTY: Captain Max W. Blanton, Brazoria County; Captain John G. Gunning, Brazoria County.

To be a Member of the BOARD OF DIRECTORS, RUNNELS COUNTY WATER AUTHORITY: Kenneth Horton Slimp, Runnels County.

To be Members of the PRODUCE RECOVERY FUND BOARD: Mrs. Marian Sue Hawkins, Castro County; Humberto M. Garcia, Starr County; Martin Hyman Rutchik, Dallas County; Douglas Cleo Brown, McLennan County.

To be JUDGE OF THE 213TH JUDICIAL DISTRICT, TARRANT COUNTY: George Stephen Kredell, Tarrant County.

#### **BILL AND RESOLUTIONS ORDERED NOT PRINTED**

On motion of Senator Blake and by unanimous consent, the following bill and resolutions were ordered not printed:

<b>H.B. 44</b>	<b>H.C.R. 49</b>
<b>H.C.R. 11</b>	<b>H.C.R. 61</b>
<b>H.C.R. 17</b>	<b>S.C.R. 10</b>
<b>H.C.R. 19</b>	<b>S.R. 64</b>
<b>C.S.H.C.R. 20</b>	<b>S.R. 70</b>
<b>C.S.H.C.R. 27</b>	<b>S.C.R. 25</b>
<b>H.C.R. 48</b>	

#### **HOUSE BILL ON FIRST READING**

The following bill received from the House was read the first time and referred to the Committee indicated:

**H.B. 15**, To Committee on State Affairs.

**SENATE BILLS AND RESOLUTION ON FIRST READING**

The following bills and resolution were introduced, read first time and referred to the Committee indicated:

**S.B. 80** by Brooks Finance  
Relating to the appraisal of certain property for ad valorem taxation.

**S.B. 81** by Barrientos Education  
Relating to the amount and terms of, and fees payable in connection with, student loans from the Texas Opportunity Plan Fund.

**S.B. 82** by Parker Education  
Relating to the appraisal of teachers and administrators for purposes of the career ladder.

**S.B. 83** by McFarland, Parmer Criminal Justice  
Relating to certain medical tests required of persons arrested for offenses involving sexual assault.

**S.B. 84** by Jones Finance  
Relating to the payment of hazardous duty pay to certain state employees.

**S.B. 85** by Glasgow Intergovernmental Relations  
Relating to the jurisdiction of the County Court at Law of Wise County.

**S.B. 86** by Parker, Caperton, Jones, Parmer Education  
Relating to the appointment of the members of the State Board of Education.

**S.B. 87** by Brooks, Edwards Health and Human Services  
Relating to reports to the Texas State Board of Medical Examiners and declaring an emergency.

**S.J.R. 8** by Montford Finance  
Proposing a constitutional amendment relating to the dedication of certain funds for highway purposes.

**CO-AUTHOR OF SENATE BILL 83**

On motion of Senator McFarland and by unanimous consent, Senator Parmer will be shown as Co-author of **S.B. 83**.

**CO-AUTHOR OF SENATE BILL 66**

On motion of Senator Parmer and by unanimous consent, Senator Anderson will be shown as Co-author of **S.B. 66**.

**PROCLAMATION FROM THE GOVERNOR**

The President laid before the Senate the following Proclamation from the Governor:

**PROCLAMATION****BY THE****GOVERNOR OF THE STATE OF TEXAS****TO ALL TO WHOM THESE PRESENTS SHALL COME:**

Pursuant to Article III, Section 40 and Article IV, Section 8 of the Texas Constitution, I, William P. Clements, Jr., Governor of Texas, do hereby submit the following matters for consideration by the Seventieth Texas Legislature in its Second Called Session:

(1) legislation relating to the application of the Texas Sunset Act to public systems of higher education;

- (2) legislation relating to the authority of the Texas Department of Health to execute federal forms necessary for the receipt of health facilities funding;
- (3) legislation relating to the jurisdiction of county civil courts at law in counties with a population of two million or more;
- (4) legislation relating to the provision of services to residents of counties that have been declared a disaster area;
- (5) legislation relating to the definition of commercial motor vehicle;
- (6) legislation relating to the levy of a maintenance and operation tax for the operation of the ports and harbors of certain cities, and providing for the preparation and adoption of budgets for the ports and harbors of certain cities;
- (7) legislation relating to the duties and authority of the Harris County District Attorney to represent the state in criminal and civil matters in the district and inferior courts of Harris County;
- (8) legislation relating to the membership of the State Board of Education;
- (9) legislation relating to the payment of supplies, materials, equipment, and services by state agencies;
- (10) legislation relating to the accountability review and tax rate of metropolitan transportation authorities;
- (11) legislation relating to the assessment of damages in eminent domain proceedings;
- (12) an amendment to **H.J.R. 18**, 70th Legislature, Regular Session, proposing a constitutional amendment relating to the creation, operation and financing of jail districts; and
- (13) legislation such as that sponsored by Senator Barrientos relating to the amount and terms of, and fees payable in connection with, student loans from the Texas Opportunity Plan Fund.

The Secretary of State shall take notice of this action and notify the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the seal of the State to be affixed hereto at Austin, this 15th day of July, 1987.

/s/W. P. Clements, Jr.  
William P. Clements, Jr.  
Governor of Texas

ATTEST:

Jack M. Rains  
Secretary of State

The Proclamation was read and was filed with the Secretary of the Senate.

#### NOTICE OF CONSIDERATION OF NOMINATIONS

Senator Edwards gave notice that he would tomorrow at the conclusion of Morning Call submit to the Senate for consideration nominations to agencies, boards and commissions of the State.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 21 ON SECOND READING**

On motion of Senator Farabee and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**C.S.H.B. 21**, Relating to the rate of state contributions to, and the amount of certain annuities payable by, the Employees Retirement System of Texas.

The bill was read second time and was passed to third reading viva voce vote.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 21 ON THIRD READING**

Senator Farabee moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 21** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 0.

Absent: Santiesteban, Uribe, Washington.

Absent-excused: Lyon, Parker.

The bill was read third time and was passed by the following vote: Yeas 26, Nays 0. (Same as previous roll call)

**HOUSE BILL 19 ON SECOND READING**

On motion of Senator Farabee and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**H.B. 19**, Relating to recounts of elections.

The bill was read second time and was passed to third reading viva voce vote.

**HOUSE BILL 19 ON THIRD READING**

Senator Farabee moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 19** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 0.

Absent: Santiesteban, Uribe, Washington.

Absent-excused: Lyon, Parker.

The bill was read third time and was passed by the following vote: Yeas 26, Nays 0. (Same as previous roll call)

**SENATE BILL 56 ON SECOND READING**

On motion of Senator Farabee and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 56**, Relating to issuance of certain obligations by the state treasurer and investment by the state treasurer of proceeds of obligations.

The bill was read second time.

Senator Farabee offered the following amendment to the bill:

Amend **S.B. 56** as follows:

(1) On page 1, line 56, between the period and "The", insert "The notes are not subject to review by the bond review board created by S.B. 1027, Acts of the 70th Legislature, Regular Session, 1987."

(2) On page 4, between lines 8 and 9, insert:

SECTION 2.006. Section 404.123, Government Code, is amended by adding Subsection (e) to read as follows:

(e) The notes are not subject to review by the bond review board created by S.B. 1027, Acts of the 70th Legislature, Regular Session, 1987.

The amendment was read and was adopted viva voce vote.

On motion of Senator Farabee and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

#### SENATE BILL 56 ON THIRD READING

Senator Farabee moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that S.B. 56 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 0.

Absent: Santiesteban, Uribe, Washington.

Absent-excused: Lyon, Parker.

The bill was read third time and was passed by the following vote: Yeas 26, Nays 0. (Same as previous roll call)

#### SENATE BILL 66 ON SECOND READING

On motion of Senator Parmer and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 66**, Relating to the videotaped testimony of a child who is an alleged victim of certain criminal offenses.

The bill was read second time.

Senator Parmer offered the following amendment to the bill:

Amend S.B. 66 by striking all below the enacting clause and substituting the following:

SECTION 1. Article 38.071, Code of Criminal Procedure, is amended to read as follows:

Art. 38.071. TESTIMONY OF CHILD WHO IS VICTIM OF OFFENSE

Sec. 1. This article applies only to a proceeding in the prosecution of an offense defined by any of the following sections of the Penal Code if the offense is[; including but not limited to an offense under Chapter 21, Penal Code, as amended; or Section 43.25, Penal Code, as amended;] alleged to have been committed against a child 12 years of age or younger, and applies only to the statements or testimony of that child:

- (1) Section 21.11 (Indecency with a Child);
- (2) Section 22.011 (Sexual Assault);
- (3) Section 22.02 (Aggravated Assault);
- (4) Section 22.021 (Aggravated Sexual Assault);

- (5) Section 22.04(b) (Injury to a Child or an Elderly Individual);
- (6) Section 22.04(c) (Injury to a Child or an Elderly Individual), if the conduct is committed intentionally or knowingly;
- (7) Section 25.02 (Incest);
- (8) Section 25.06 (Solicitation of a Child), if the offense is a felony of the third degree; or
- (9) Section 43.25 (Sexual Performance by a Child).

Sec. 2. (a) On the motion of the attorney representing the state or the attorney representing the defendant, and on a finding by the trial court that the following requirements have been substantially satisfied, the [The] recording of an oral statement of the child made before a complaint has been filed or an indictment returned charging any person with an offense to which this article applies [the proceeding begins] is admissible into evidence if:

- (1) no attorney or law enforcement officer [for either party] was present when the statement was made;
- (2) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;
- (3) the recording equipment was capable of making an accurate recording, the operator of the equipment was competent, the quality of the recording is sufficient to allow the court and the finder of fact to assess the demeanor of the child and the interviewer, and the recording is accurate and has not been altered;
- (4) the statement was not made in response to questioning calculated to lead the child to make a particular statement;
- (5) every voice on the recording is identified;
- (6) the person conducting the interview of the child in the recording is expert in the handling, treatment, and investigation of child abuse cases, present at the proceeding, called by the state to testify at trial, and subject [available] to cross-examination [testify or be cross-examined by either party];
- (7) immediately after a complaint was filed or an indictment returned charging the defendant with an offense to which this article applies, the attorney representing the state notified the court, the defendant, and the attorney representing the defendant of the existence of the recording and that the recording may be used at the trial of the offense;
- (8) the defendant, [or] the attorney for the defendant, and the expert witnesses for the defendant were [is] afforded an opportunity to view the recording before it is offered into evidence and, in a proceeding conducted before a district court judge but outside the presence of the jury, were afforded an opportunity to cross-examine the child as provided by Subsection (b) of this section from any time immediately following the filing of the complaint or the returning of an indictment charging the defendant with an offense to which this article applies until the date the trial begins;
- (9) the recording of the cross-examination, if there is one, is admissible under Subsection (b) of this section;
- (10) the court finds, after considering relevant factors including the relationship of the defendant to the child, the character and duration of the alleged offense, the age, maturity, and emotional stability of the child, and the time elapsed since the alleged offense, that the child is more likely than not to be unavailable to testify because:
  - (A) of emotional or physical causes, including the confrontation with the defendant or the ordinary involvement as complainant in the courtroom trial; or
  - (B) the child would suffer undue psychological or physical harm through his involvement at trial;
- (11) before giving his testimony, the child was placed under oath or was otherwise admonished in a manner appropriate to the child's age and maturity to testify truthfully;

(12) the court finds from the recording or through an in camera examination of the child that the child was competent to testify at the time that the recording was made; and

(13) only one continuous recording of the child was made or the necessity for pauses in the recordings or for multiple recordings has been established at trial[; and  
[(8) the child is available to testify].

(b) On the motion of the attorney representing the defendant, a district court may order that the cross-examination of the child be taken and be recorded before the judge of that court at any time before the date the trial begins. On a finding by the trial court that the following requirements were satisfied, the recording of the cross-examination of the child is admissible into evidence and shall be viewed by the finder of fact only after the finder of fact has viewed the recording authorized by Subsection (a) of this section if:

(1) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(2) the recording equipment was capable of making an accurate recording, the operator of the equipment was competent, the quality of the recording is sufficient to allow the court and the finder of fact to assess the demeanor of the child and the attorney representing the defendant, and the recording is accurate and has not been altered;

(3) every voice on the recording is identified;

(4) the defendant, the attorney representing the defendant, the attorney representing the state, and the expert witnesses for the defendant and the state were afforded an opportunity to view the recording before the trial began;

(5) the child was placed under oath before the cross-examination began or was otherwise admonished in a manner appropriate to the child's age and maturity to testify truthfully; and

(6) only one continuous recording of the child was made or the necessity for pauses in the recordings or for multiple recordings was established at trial.

(c) During cross-examination under Subsection (b) of this section, to the extent practicable, only a district court judge, the attorney representing the defendant, a pro se defendant, the attorney representing the state, persons necessary to operate the equipment, and any other person whose presence would contribute to the welfare and well-being of the child may be present in the room with the child during his testimony. Only the attorneys and the judge may question the child. To the extent feasible the persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during his testimony, but does not permit the child to see or hear them. The court shall permit the defendant to observe and hear the testimony of the child and to communicate contemporaneously with his attorney during periods of recess or by audio contact, but shall attempt to ensure that the child cannot hear or see the defendant other than a pro se defendant. As used in this section "contemporaneous" includes being present but out of view, periodic recessing, and audio contact.

(d) In this section, "cross-examination" includes redirect questioning by the attorney representing the state [If the electronic recording of the oral statement of a child is admitted into evidence under this section, either party may call the child to testify, and the opposing party may cross-examine the child].

Sec. 3. On its own motion or on the motion of the attorney representing the state or the attorney representing the defendant, and if the court finds there is good cause, the [The] court may[, on the motion of the attorney for any party,] order that the testimony of the child be taken during the trial in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the court, the court reporter, and the finder of fact [in the proceeding]. Only the judge, the attorneys for the defendant and for the state, a pro se defendant,

persons necessary to operate the equipment, and any person whose presence would contribute to the welfare and well-being of the child may be present in the room with the child during his testimony. Only the attorneys and the judge may question the child. To the extent practicable, the [Any] persons necessary to operate the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during his testimony, but does not permit the child to see or hear them. The court shall permit the defendant to observe and hear the testimony of the child and to communicate contemporaneously with his attorney during periods of recess or by audio contact [in person], but the court shall attempt to ensure that the child cannot hear or see the defendant, unless the defendant is a pro se defendant. The court shall permit the attorney for the defendant adequate opportunity to confer with the defendant during cross-examination of the child. On application of the attorney for the defendant, the court may recess the proceeding before or during cross-examination of the child for a reasonable time to allow the attorney for the defendant to confer with the defendant.

Sec. 4. (a) On its own motion or on the motion of the attorney representing the state or the attorney representing the defendant, and if the court finds there is good cause, the [The] court may[-on the motion of the attorney for any party,] order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact in the proceeding. [Only those persons permitted to be present at the taking of testimony under Section 3 of this article may be present during the taking of the child's testimony, and the persons operating the equipment shall be confined from the child's sight and hearing as provided by Section 3.] The court shall permit the defendant to observe and hear the testimony of the child and to communicate contemporaneously with his attorney during periods of recess or by audio contact [in person,] but shall attempt to ensure that the child cannot hear or see the defendant.

(b) The court may set any other conditions and limitations on the taking of the testimony that it finds just and appropriate, taking into consideration the interests of the child, the rights of the defendant, and any other relevant factors. The court shall also ensure that:

(1) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(2) the recording equipment was capable of making an accurate recording, the operator was competent, the recording is sufficient to allow the court and the finder of fact to assess the demeanor of the child and the interviewer, and the recording is accurate and is not altered;

(3) each voice on the recording is identified; [and]

(4) the defendant and the attorneys for each party are [is] afforded an opportunity to view the recording before it is shown in the courtroom;

(5) the court finds that the child's competency to testify is established on the recording and that the child was placed under oath before giving the testimony or was otherwise admonished in a manner appropriate to the child's age and maturity to testify truthfully; and

(6) only one continuous recording of the child was made or the necessity for pauses in the recordings or for multiple recordings is established at trial.

(c) After a complaint has been filed or an indictment returned charging the defendant, on the motion of the attorney representing the state, and if the court finds that the child is unavailable to testify at trial, the court may order that the deposition of the child be taken outside of the courtroom in the same manner as a deposition may be taken in a civil matter. A deposition taken under this subsection is admissible into evidence, and the child may not be required to testify at trial.

Sec. 5. If the court orders the testimony of a child to be taken under Section 3 or 4 of this article or if the court finds the testimony of the child taken under

Section 2 of this article is admissible into evidence, the child may not be required to testify in court at the proceeding for which the testimony was taken, unless the court finds there is good cause.

Sec. 6. In making any determination of good cause under this article, the court shall consider the rights of the defendant, the interests of the child, the relationship of the defendant to the child, the character and duration of the alleged offense, the age, maturity, and emotional stability of the child, the time elapsed since the alleged offense, and any other relevant factors.

Sec. 7. In making any determination of unavailability under this article, the court shall consider the ability of the child to testify at trial, the emotional and physical stress to the child caused by the courtroom environment or confrontation with the defendant, and the trauma of ordinary participation of the complainant in the courtroom.

Sec. 8. If the court finds the testimony taken under Section 2 of this article is admissible into evidence or if the court orders the testimony to be taken under Section 3 or 4 of this article, and if the identity of the perpetrator is a contested issue, the child additionally must make an in-person identification of the defendant either at or before trial.

Sec. 9. In ordering a child to testify under this article, the court shall take all reasonable steps necessary and available to minimize undue psychological trauma to the child and to minimize the emotional and physical stress to the child caused by relevant factors, including the confrontation with the defendant and the ordinary participation of the complainant in the courtroom.

SECTION 2. (a) The purpose of this legislation is to correct and improve the statutory provision that the Court of Criminal Appeals held unconstitutional. In its opinion the court expresses numerous well-founded concerns including that the statute unnecessarily weakens certain defendants' constitutional rights to confrontation and due process, insufficiently authorizes court discretion in these cases, and grants rights to child sexual assault victims beyond what is necessary to effectuate the compelling state interests protecting these children. The state interests involved in this legislation are numerous, intertwined, and conflicting. The interests on the defendant's side include:

- (1) his right of confrontation under the Sixth and Fourteenth Amendments to the United States Constitution;
- (2) his state-guaranteed right of confrontation under Article I, Section 10, of the Texas Constitution;
- (3) the due process clause of the Fourteenth Amendment to the United States Constitution; and
- (4) the due course of law guarantee of Article I, Section 19, of the Texas Constitution.

On the other side of the balancing equation are the state interests concerning the children who are victims of sexual assault. The fundamental factor that makes it difficult to balance the interests of the defendant with the interests of the child sex crime victim is that the court system has traditionally operated as if all victims were adults. The criminal justice system requires all victims to have the maturity to cope with the intimidating nature of confronting the defendant and with the pressures related to the ordinary participation of the victim in the courtroom trial. If the adult is unable to cope with these pressures, the person does not testify, and a guilty defendant is possibly not convicted. However, the inability to confront the defendant and participate in the trial process is significantly higher for children. Even if the child is able to testify, the child is more likely to suffer undue psychological trauma than an adult in the same situation. A child is more likely than an adult to block out the alleged offense so it is imperative that the information needed from a child about an offense must be captured quickly or it may be lost.

Since a child is more likely than an adult to have a hard time recovering from the trauma related to an offense, it is crucial that the child provide the testimony as early and as infrequently as possible. Although unintentional, the criminal justice system effectively discriminates against victims who are children. This discrimination is unacceptable in a caring society when there are reasonable alternatives that sufficiently protect the fundamental rights of defendants.

The videotape legislation as originally passed was designed to partially address this structural problem; however, the court states in its opinion that the legislation went too far. It gave child victims more rights than were needed to implement the compelling state interests in protecting these children. To address the three areas of concern listed above, this legislation does the following.

(b) To strengthen the defendant's constitutional rights, this legislation:

(1) lists specific offenses for which the procedure may be used instead of trying to provide a general list of applicable offenses and a general description of other affected offenses; the approach taken in this legislation places the burden on the legislature to keep the list updated;

(2) applies only to felonies; deletes application to some misdemeanor offenses;

(3) continues application only to cases where the child is the victim, and does not apply the videotaping provision to a witness to an offense committed against another individual;

(4) requires the videotaping in Section 2, Article 38.071, Code of Criminal Procedure, to be recorded before a complaint has been filed or an indictment returned, instead of being delayed until just before the proceeding begins;

(5) directs the state to immediately notify the defendant, after the defendant has first been charged, that there is a videotape to view;

(6) grants the right to the defendant to cross-examination upon being charged; does not place a limitation on when the cross-examination must occur, even though for the child's interest a limitation would be preferable; grants the defendant the right to cross-examination as contemporaneously as possible while still meeting the state interest in providing for the fair administration of justice that compels the system to record a child's testimony as early as possible after an offense is reported;

(7) retains the defendant's right to decline to cross-examine the child;

(8) provides for an original videotaping of a more judicial nature by prohibiting law enforcement officers from being present because of the need to establish a neutral setting, by requiring the quality of the recording to be sufficient to allow the assessment of the demeanor of the child and the interviewer, by requiring the interviewer to be expert in handling child abuse cases, by requiring the child to be under oath, by requiring a determination of the child's competency, and by requiring that there be only one continuous recording;

(9) provides full cross-examination rights to the defendant as soon as the defendant is charged, including the defendant's right to contemporaneously communicate with his counsel during the cross-examination even though direct personal confrontation is not available; the right to personal confrontation if he is a pro se defendant; and the right to have the child under oath and on continuous recording;

(10) requires the state to call the interviewer of the original videotape during its case in chief and to subject him to cross-examination;

(11) requires the child to make an in-person identification if the identity of the perpetrator is a contested issue; and

(12) eliminates the provisions which effectively allowed bolstering of the child witness and which effectively required the defendant to call the child to the stand for cross-examination.

(c) To expand the court's discretion in applying the state interests to each case, this legislation:

(1) requires a finding by the court that 13 provisions have been adequately satisfied before the original recording is admissible;

(2) provides that the court must determine that the child would be necessarily unavailable to testify before the original recording is admissible;

(3) provides that the court must find the child competent before the original recording is admissible;

(4) requires that the court find that six provisions have been adequately satisfied before the original and cross-examination recordings are admissible;

(5) provides the court with the discretion to determine what steps are necessary to minimize the trauma and stress on the child; and

(6) grants the court the discretion to decide if good cause exists to require a child to testify even though the videotape testimony was taken.

(d) To more precisely implement the compelling state interests in the child, this legislation:

(1) requires the cross-examination to occur before a judge, even though the cross-examination may then be more intimidating to the child, because the judge can control unnecessary and improper questioning by the defendant's counsel;

(2) continues the provision that the child is not to see the defendant during cross-examination, unless the defendant is pro se;

(3) restricts the number of tapings of each type to one continuous taping;

(4) instructs the court to consider what can be done to minimize the trauma and stress to the child;

(5) provides that the court may order a child interpreter for all dialogue between the child and attorneys; and

(6) provides that the child does not have to be cross-examined at trial unless the judge finds good cause.

(e) By providing the changes included in this Act the legislature believes that the courts will have a sufficiently flexible system that properly protects the rights of defendants while reducing the discriminatory effects of the criminal justice system on certain child sex crime victims.

**SECTION 3.** (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For the purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

**SECTION 4.** This Act takes effect September 1, 1987.

**SECTION 5.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

The amendment was read and was adopted viva voce vote.

On motion of Senator Parmer and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

#### **SENATE BILL 66 ON THIRD READING**

Senator Parmer moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that S.B. 66 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 1.

Nays: Glasgow.

Absent: Santiesteban, Uribe, Washington.

Absent-excused: Lyon, Parker.

The bill was read third time and was passed by the following vote: Yeas 25, Nays 1. (Same as previous roll call)

#### **GUEST PRESENTED**

Senator Krier was recognized and introduced the Capitol Physician for the Day, Dr. Perry Post of San Antonio.

Dr. Post was welcomed and received the appreciation of the Senate for serving, for the seventh time, as Capitol Physician today.

#### **SENATE BILL 64 ON SECOND READING**

On motion of Senator Jones and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 64**, Relating to the operation of and issuance of bonds for projects by the Texas Public Building Authority.

The bill was read second time and was passed to engrossment viva voce vote.

#### **SENATE BILL 64 ON THIRD READING**

Senator Jones moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 64** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 0.

Absent: Santiesteban, Uribe, Washington.

Absent-excused: Lyon, Parker.

The bill was read third time and was passed by the following vote: Yeas 26, Nays, 0. (Same as previous roll call)

#### **SENATE RULE 103 SUSPENDED**

On motion of Senator Jones and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Finance might consider the following bills and resolution at 2:00 p.m. today:

**S.J.R. 8**  
**S.B. 84**  
**H.B. 18**

#### **SENATE RULE 103 SUSPENDED**

On motion of Senator Caperton and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Jurisprudence might consider the following resolutions at 1:30 p.m. today:

**S.C.R. 1**  
**S.C.R. 13**  
**S.C.R. 7**  
**S.C.R. 11**

**SENATE RULE 103 SUSPENDED**

On motion of Senator Brooks and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Health and Human Services might consider the following bills at the conclusion of today's session:

**S.B. 62**  
**S.B. 87**

**SENATE RULE 103 SUSPENDED**

On motion of Senator Truan and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Education might consider the following bills at 9:30 a.m. tomorrow:

**S.B. 82**  
**S.B. 86**  
**S.B. 81**

**HEALTH AND HUMAN SERVICES COMMITTEE  
GRANTED PERMISSION TO MEET**

On motion of Senator Brooks and by unanimous consent, the Committee on Health and Human Services was granted permission to meet while the Senate was in session.

**SENATE RULE 103 SUSPENDED**

On motion of Senator Parmer and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Intergovernmental Relations might consider the following bills upon recess today:

**S.B. 75**  
**H.B. 92**  
**H.B. 120**  
**S.B. 85**

**COMMITTEE SUBSTITUTE SENATE BILL 68  
ON SECOND READING**

On motion of Senator Montford and by unanimous consent, the regular order of business and the printing rule were suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 68**, Relating to allocations of funds to the foundation school fund and to the state highway fund.

The bill was read second time.

Senator Montford offered the following amendment to the bill:

Amend **C.S.S.B. 68** by striking all below the enacting clause and substituting the following:

**SECTION 1.** (a) For the fiscal biennium ending August 31, 1989, of the funds that represent previous general revenue fund transfers and other deposits and revenues not dedicated by the constitution for the purposes of Article VIII, Section 7-a, of the Texas Constitution, and that are on deposit or would otherwise be deposited to the credit of the state highway fund, the comptroller shall transfer in equal monthly installments a total of \$280 million to the foundation school fund.

(b) For the fiscal biennium ending August 31, 1991, the comptroller shall transfer in equal monthly installments a total of \$280 million from the general

revenue fund to the state highway fund. The transferred funds may not be appropriated for purposes other than those provided by Article VIII, Section 7-a, of the Texas Constitution.

(c) For the fiscal years ending August 31, 1989, and August 31, 1990, the comptroller shall make the allocations provided by Sections 153.503, 153.504, and 153.505, Tax Code, on or before the first workday after the end of each of the first 11 months of the fiscal year and on August 31 of each fiscal year.

(d) To account for the time value of the funds that would be on deposit in the state highway fund but for the transfers under Subsection (a) of this section, the comptroller shall, during the biennium ending August 31, 1991, transfer from the general revenue fund to the state highway fund an amount determined by applying to the transfers under Subsection (a) of this section the average interest rate received from investments of money in funds and accounts in the charge of the treasurer during the preceding fiscal biennium. The comptroller shall make the transfers under this subsection periodically on dates determined by the comptroller to avoid disruptions of payments of other general revenue fund obligations while at the same time making the smallest possible transfer.

SECTION 2. (a) This Act takes effect September 1, 1987, but only if:

(1) H.B. 62, 70th Legislature, 2nd Called Session, 1987, becomes law; and

(2) the legislature adopts S.J.R. No. \_\_\_\_\_, Acts of the 70th Legislature, 2nd Called Session, 1987, proposing a constitutional amendment dedicating federal highway reimbursements for the purposes of acquiring rights-of-way and constructing, maintaining, and policing public roadways.

(b) If that Act does not become law, or that resolution is not adopted, this Act has no effect.

(c) For purposes of this section, H.B. No. 62 becomes law on signature by the governor or on becoming law under Article IV, Section 14, of the Texas Constitution, without the governor's signature, without regard to the effective date of the Act.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

The amendment was read and was adopted viva voce vote.

On motion of Senator Montford and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

#### COMMITTEE SUBSTITUTE SENATE BILL 68 ON THIRD READING

Senator Montford moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.S.B. 68 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 0.

Absent: Santiesteban, Uribe, Washington.

Absent-excused: Lyon, Parker.

The bill was read third time and was passed by the following vote: Yeas 26, Nays 0. (Same as previous roll call)

**SENATE BILL 52 ON SECOND READING**

On motion of Senator Montford and by unanimous consent, the regular order of business and the printing rule were suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 52**, Relating to the sale of certain state-owned property to the State Department of Highways and Public Transportation.

The bill was read second time.

Senator Montford offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **S.B. 52** on pages 3 and 4 by striking Section 4 of the bill and substituting a new Section 4 to read as follows:

**SECTION 4. LEASE OR DISPOSAL.** (a) The State Highway and Public Transportation Commission may lease all or part of the property acquired under this Act.

(b) On request by the governing body of the appropriate agency, the State Highway and Public Transportation Commission shall lease for \$1 a year for a term expiring not later than August 31, 1991, any portion of the land described by Section 2(a) of this Act to the Texas Department of Mental Health and Mental Retardation and any portion of the land described by Section 2(b) of this Act to the Texas Department of Corrections, if the land is determined by the commission and the appropriate agency's governing body to be essential to the continuation of the agency's operations. The Legislative Budget Board shall resolve any disputes under this subsection between the commission and an agency's governing body. The commission may not sell any of the land before the leases required by this subsection are executed, and may not sell land while it is leased under this subsection.

(c) Any disposal of any of the property acquired under this Act shall be subject to and in accordance with the procedures for disposal of surplus land acquired for highway purposes, as provided by Chapter 99, General Laws, Acts of the 42nd Legislature, Regular Session, 1931 (Article 6673a, Vernon's Texas Civil Statutes).

(d) Proceeds from the lease or sale of the property acquired under this Act shall be deposited to the credit of the state highway fund.

The committee amendment was read.

Senator Barrientos offered the following substitute for Committee Amendment No. 1:

**Floor Amendment No. 1**

Amend **S.B. 52** by striking Section 4 and substituting the following:

**SECTION 4. LEASE OR DISPOSAL.** (a) The State Highway and Public Transportation commission may lease any property acquired under this Act. However, if land described by Section 2(a) (2) of this Act is acquired, the commission shall lease that land to the Texas Department of Mental Health and Mental Retardation for \$1 a year.

(b) Any disposal of property acquired under this Act shall be subject to and in accordance with Chapter 99, General Laws, Acts of the 42nd Legislature, Regular Session, 1931 (Article 6673a, Vernon's Texas Civil Statutes), except that the property shall be sold for its fair market value as determined by an independent M.A.I. appraiser.

(c) Proceeds from the lease or sale of property acquired under this Act shall be deposited to the credit of the state highway fund, except that \$8 million of the

proceeds from the sale of the land described by Section 2(a) (2) of this Act shall be deposited to the credit of a special account in the general revenue fund that may be used only by the Texas Department of Mental Health and Mental Retardation.

(d) A purchaser or lessee of any of the land described by Section 2(a) (1) of this Act shall comply with applicable development and land-use ordinances and required regulations of the city of Austin in using the land.

The amendment was read.

On motion of Senator Montford, Floor Amendment No. 1 was tabled by the following vote: Yeas 18, Nays 9.

Yeas: Anderson, Armbrister, Blake, Brooks, Brown, Caperton, Farabee, Glasgow, Harris, Henderson, Johnson, Jones, Krier, Leedom, McFarland, Montford, Sarpalius, Sims.

Nays: Barrientos, Edwards, Green, Parmer, Tejeda, Truan, Uribe, Whitmire, Zaffirini.

Absent: Santiesteban, Washington.

Absent-excused: Lyon, Parker.

Question recurring on the adoption of Committee Amendment No. 1, the amendment was adopted viva voce vote.

Senator Montford offered the following committee amendment to the bill:

**Committee Amendment No. 2**

Amend S.B. 52 as follows:

At page 1, line 12, strike "\$110" and substitute "\$110.2".

At page 1, line 13, strike "\$10.6" and substitute "\$10.4".

At page 1, line 16, after the period strike the remainder of subsection (b) and add a new subsection (c) reading as follows:

"(c) The \$10.4 million of constitutionally dedicated monies shall be expended to purchase from the Texas Board of Mental Health and Mental Retardation on behalf of the state 75.668 acres of land, more or less, out of the George W. Spear League in Travis County, Texas, and being a portion of a tract of land described in Volume 76, Page 225 of the Deed Records of Travis County, Texas. The legislature, on consultation with the State Highway and Public Transportation Commission has found and determined, and does hereby find and determine, that this tract of land is needed for highway purposes, to-wit, the construction of buildings to house administrative offices and support facilities of the State Department of Highways and Public Transportation. The legislature has further found and determined, and does hereby find and determine, that \$10.4 million represents the value of this tract of land as appraised by the General Land Office in April 1987."

At page 1, line 22, after "The" insert "remaining".

At page 1, line 24, strike the colon.

At page 2, lines 1 through 4, delete subsection (1).

At page 2, line 5 delete "(2)" and join the remainder of the section with the incomplete sentence carried over from page 1, line 24.

The committee amendment was read and was adopted viva voce vote.

Senator Barrientos offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend S.B. 52 as follows:

- (1) on page 1, line 7, delete "shall" and substitute "may";
- (2) on page 1, line 8, insert the words "any of" between the words "Transportation" and "the";
- (3) on page 1, lines 9 and 10 delete the words "a total amount of \$120.6 million" and substitute the following: the fair market value of the property as determined by an independent M.A.I. appraiser. A determination to sell a tract under this subsection must be made by the governing body of each participating agency.
- (4) on page 1, line 12, insert the words "at the appraised value" between the words "land" and "using";
- (5) on page 1, line 12, insert the words "up to" between the words "using" and "\$110.2";

The amendment was read.

On motion of Senator Montford, Floor Amendment No. 2 was tabled by the following vote: Yeas 16, Nays 9.

Yeas: Anderson, Armbrister, Blake, Brooks, Brown, Caperton, Farabee, Harris, Henderson, Johnson, Jones, Krier, Leedom, McFarland, Montford, Sims.

Nays: Barrientos, Edwards, Green, Parmer, Tejeda, Truan, Uribe, Whitmire, Zaffrini.

Absent: Glasgow, Santiesteban, Sarpalius, Washington.

Absent-excused: Lyon, Parker.

On motion of Senator Montford and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

**RECORD OF VOTE**

Senator Barrientos asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

**SENATE BILL 52 ON THIRD READING**

Senator Montford moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that S.B. 52 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 1.

Nays: Barrientos.

Absent: Santiesteban, Washington.

Absent-excused: Lyon, Parker.

The bill was read third time and was passed by the following vote: Yeas 26, Nays 1. (Same as previous roll call)

**REPORT OF STANDING COMMITTEE**

By unanimous consent, Senator Whitmire, Acting Chairman, submitted the following report for the Committee on Health and Human Services:

**S.B. 87**

By unanimous consent, Senator Brooks submitted the following report for the Committee on Health and Human Services:

**S.B. 62****SENATE RULE 14.1(d) SUSPENDED**

On motion of Senator Blake and by unanimous consent, Senate Rule 14.1(d), relating to notice of Local and Uncontested Bills Calendar, was suspended.

**NOTICE OF SESSION TO HOLD  
LOCAL AND UNCONTESTED BILLS CALENDAR**

Senator Blake gave notice that a Local and Uncontested Bills Calendar would be held at 10:30 a.m. on Thursday, July 16, 1987.

**MOTION TO RECESS**

On motion of Senator Brooks and by unanimous consent, the Senate agreed to take recess until 10:30 a.m. tomorrow. The Senate further agreed to take recess at the conclusion of tomorrow's Local Calendar Session until 11:00 a.m. tomorrow.

**MEMORIAL RESOLUTIONS**

**S.R. 86** - By Glasgow: Memorial resolution for "Pappy" Guy Robinson.

**S.R. 88** - By Glasgow: Memorial resolution for Pauline Faye "Polly" Horton.

**S.R. 90** - By Brooks: Memorial resolution for James R. Hornbeck.

**CONGRATULATORY RESOLUTIONS**

**H.C.R. 65** - (Lyon): Extending congratulations to Monsignor Milam J. Joseph on the occasion of his 50th birthday.

**S.R. 81** - By Truan: Extending congratulations to Lupe Suarez for becoming the top contender for the world junior lightweight title.

**S.R. 82** - By Sarpalius: Extending best wishes to Bedford Forrest for much success as Farm and Ranch Director at KFDA-TV.

**S.R. 83** - By Sarpalius: Commending Mary Lou Hazelrigg.

**S.R. 84** - By Parker, Barrientos: Honoring Miss Mattie Jones.

**S.R. 85** - By Barrientos: Proclaiming July 19-25, 1987, as "Hispanic Families and Children Week" in Texas.

**S.R. 87** - By Glasgow: Extending congratulations to J. C. (Red) Young for receiving the Bronze Star and Purple Heart from the United States Army.

**S.R. 89** - By Brooks: Recognizing the Sam Houston Memorial Association and commending the State Association of Electric Cooperatives in Texas.

**RECESS**

On motion of Senator Brooks, the Senate at 12:22 p.m. took recess until 10:30 a.m. tomorrow.